

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CARL D. EDLUND, SR.,

Plaintiff,

v.

JO ANNE B. BARNHART, Commissioner of  
Social Security,

Defendant.

Case No. C04-5451 RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Plaintiff's Motion for Attorney's Fees Pursuant to 42 U.S.C. § 406(b) [Dkt. #26].

Having considered the entirety of the records and file herein, the Court rules as follows:

Plaintiff seeks an award of attorney's fees under 42 U.S.C. § 406(b)(1)(A) which provides that the Court may award plaintiff's attorney "a reasonable fee . . . not in excess of 25 percent of the total of the past due benefits." The parties agree that 25 percent of the past due benefits is \$34,021.50. Plaintiff's attorney has petitioned for \$9,000.00 for work done at the administrative level; therefore, of that \$34,021.50, \$25,021.50 remains which may be awarded by this Court under § 406(b). *See, Brown v. Barnhardt*, 270 F.Supp.2d 769, 771 (W.D. Va, 2003). Plaintiff was also previously awarded an attorney's fee of \$26,403.19 under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. It is therefore

**ORDERED** that Plaintiff's Motion for Attorney's Fees Pursuant to 42 U.S.C. § 406(b) [Dkt. #26] is **GRANTED**. Plaintiff's attorney shall be awarded \$7,617.81 as a reasonable fee. In order to avoid a double

1 recovery for the attorney, counsel shall refund the smaller § 406(b) fee to his client. *Russell v. Sullivan*, 930  
2 F.2d 1443, 1446 (9<sup>th</sup> Cir. 1991).

3 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing  
4 pro se.

5 Dated this 6<sup>th</sup> day of July, 2006.

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8 RONALD B. LEIGHTON  
9 UNITED STATES DISTRICT JUDGE  
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